Supreme Court, U.S.
FILED
FEB 27 1992
OFFICE OF THE CLERK

No. 91-1159

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

RAYMOND R. MOURADIAN,
Petitioner,
v.
THE JOHN HANCOCK COMPANIES, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

JOINT BRIEF IN OPPOSITION OF RESPONDENTS JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, *ET AL.* AND SENTRY INSURANCE A MUTUAL COMPANY, *ET AL.*

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QUESTION PRESENTED

Did the Court of Appeals properly conclude that "hybrid" Section 301/duty of fair representation claims under the Labor-Management Relations Act are governed by the military service tolling provision in Section 10(b) of the LMRA, rather than by the military service tolling provision in Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940?

RULE 29.1 STATEMENT

Respondents John Hancock Mutual Life Insurance Company, *et al.*, have the following parent companies, affiliates and subsidiaries other than wholly-owned subsidiaries:

John Hancock Servicos Internacionais S/C Limitade (Brazil)
John Hancock International Services, S.A. (Belgium)
John Hancock International Services (Hong Kong) Limited
P.T. Asuransi Pensiun Bumiputera John Hancock (Indonesia)
British American Life & General Insurance Berhad (Malaysia)
British American Life Assurance Pte. Ltd. (Singapore)
The Interlife Assurance Company, Ltd. (Thailand)
John Hancock International Services Pte. Ltd. (Singapore)
Energy Investors Management, Inc.
John Hancock Advisers International, Ltd. (England)
First Signature Bank & Trust Company
Hancock Int'l. Private Equity Management, Ltd. (England)
JHM Capital Corporation
Capital Growth (Bermuda) Management Co., Ltd.
The Maritime Life Assurance Company (Canada)
Nahama & Weagant Energy Company
Dallas Gas & Electric, Inc.
Gulf States Gas Pipeline Company
National Electronic Information Corporation
Polaris Petroleums, Ltd. (Canada)
International Human Resources Development Corporation
Hotel Property Holdings, Inc.

Respondent Sentry Insurance A Mutual Company is a parent company comprised of 17 wholly-owned subsidiaries. One of those subsidiaries, Middlesex Insurance Company, is also a named defendant in this action.

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JOINT BRIEF IN OPPOSITION OF RESPONDENTS JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, *ET AL.* AND SENTRY INSURANCE A MUTUAL COMPANY, *ET AL.*

STATEMENT OF THE CASE

Petitioner brought this action in 1986 alleging, *inter alia*, that Respondent John Hancock Mutual Life Insurance Company ("John Hancock") had terminated him in violation of his collective bargaining agreement and that his union, the United Food and Commercial Workers International Union, had breached its duty of fair representation by refusing to submit his discharge grievance to arbitration. Petitioner alleged that Respondent Sentry Insurance a Mutual Company ("Sentry") wrongfully participated in his termination of employment.[1] Recog-

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[1] Petitioner's complaint named numerous defendants, all of whom are listed at page ii of the Petition for Certiorari. This Joint Brief

nizing that Petitioner's allegations amounted to a "hybrid" Section 301/duty of fair representation claim under the Labor-Management Relations Act ("LMRA"), the district court dismissed Petitioner's claim because Petitioner had not filed his complaint within the six-month statute of limitations prescribed by Section 10(b) of the LMRA, 29 U.S.C. § 160(b), and made applicable to hybrid Section 301 claims by this Court's decision in *DelCostello v. Teamsters*, 462 U.S. 151 (1983).

In reaching this conclusion, the district court rejected Petitioner's contention that Section 10(b)'s six-month limitations period should be tolled because, during the six-month period, Petitioner had served once-a-month weekend duty and one two-week period of sustained duty in the Naval Reserves.[2] The court held that this intermittent Naval Reserve duty had not prevented Petitioner from commencing his lawsuit and, as a consequence, the military tolling provision of Section 10(b) was not activated. See Appendix to the Petition for Certiorari ("Pet. App."), pp. 2c-3c.

Petitioner appealed this dismissal to the First Circuit and there, for the first time, argued that the statute of limitations should be tolled under Section 205 of the Soldiers' and Sailors' Civil Relief Act ("SSCRA"), which Petitioner contended provides for tolling without any showing that his military duty prevented him from filing

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In Opposition is submitted on behalf of John Hancock and its officers and employees who are named party defendants to this action and on behalf of Sentry and its subsidiaries, officers, and employees who are named party defendants.

[2] Section 10(b) of the LMRA provides in relevant part:

> [N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such a charge by reason of service in the armed forces, in which event the six-month period shall be computed from the date of his discharge.

a complaint.[3] See Pet. App. 2c-3c. Because this contention was first raised in Petitioner's reply brief to the First Circuit, the appellate court remanded the case to the district court for consideration of this issue.

On remand, the district court reaffirmed its earlier conclusion that Section 10(b)'s military tolling provision controlled Petitioner's claim and that the requisites for such tolling had not been met. While "assuming" that SSCRA Section 205 would be applicable to military reservists such as Petitioner (Pet. App. 4b), the district court reasoned that the military tolling provision in Section 10(b) superseded the SSCRA provision because: (1) unlike the SSCRA, Section 10(b) specifically "resolved the competing, compelling interests of a strong national defense and the desire for repose in labor relations by allowing a serviceman's duty to toll otherwise applicable limitations periods, but only if his service prevented him from filing suit within the set limitations period" (Pet. App. 7b); and (2) under settled rules of statutory construction, a more specific statute should take precedence over a general one, particularly where the specific provision was enacted after the general law. Pet. App. 8b-9b.

Petitioner appealed a second time to the First Circuit. In its decision which is the subject of the certiorari petition now before this Court, the First Circuit agreed that the district court's analysis would compel application of Section 10(b) in any case in which Section 10(b) was to be applied directly. Pet. App. 3a. However, the appellate

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[3] Section 205 of SSCRA, 50 U.S.C. Appx. § 525, provides in relevant part:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court . . . by or against any person in the military service . . . whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service . . . .

court found it necessary also to consider whether the same result would obtain in a situation where, as here, the Section 10(b) statute of limitations is a "borrowed" provision to fill the interstices of federal law. Pet. App. 3a-4a. After examining this Court's decisions relating to the importation of tolling provisions along with borrowed statutes of limitations as well as this Court's rationale for utilizing the Section 10(b) period in hybrid Section 301 actions, the First Circuit concluded that the Section 10(b) tolling provisions should control Petitioner's claim. Pet. App. 5a-8a.

REASONS FOR DENYING THE WRIT

Petitioner has offered no colorable reason, much less a persuasive one, why this Court should grant a writ of certiorari in the instant case. See Rule 10 of the Rules of the Supreme Court of the United States.

First, Petitioner has not contended that the First Circuit's judgment is in conflict with the decision of any other circuit or state court of last resort. Rule 10(a). Nor has Petitioner contended that there is a conflict on this federal question among state courts of last resort. Rule 10(b). In fact, so far as we are aware, there is no other reported case dealing with the interaction of LMRA Section 10(b) and SSCRA Section 205 in hybrid Section 301 suits.

Second, Petitioner cannot legitimately contend that the First Circuit has decided a federal question that is sufficiently important to warrant this Court's intervention. Rule 10(c). Indeed, the fact that there apparently have been no other cases involving this issue during the 42 year coexistence of LMRA Section 10(b) and SSCRA Section 205 suggests that this case is somewhat of an anomaly and that it certainly does not present the kind of pervasive, important, and recurring issue that might justify resolution by this Court.

Third, Petitioner has not even suggested that the First Circuit decided this case in a way that conflicts with this

Court's decisions. On the contray, Petitioner has argued only that *DelCostello v. Teamsters*, *supra*, was wrongly decided and that this Court should have adopted a rule providing that hybrid Section 301 actions would be governed by state statutes of limitations or by the limitations provision in the Federal Arbitration Act, 9 U.S.C. § 9. Pet., pp. 3-4.

Finally, the First Circuit's judgment does not, in fact, conflict with this Court's decisions, but rather, is substantially compelled by them. As the First Circuit's discussion of the precedent makes clear (Pet. App. 4a-8a), this Court has recognized that tolling provisions in a statute of limitations bear a unique and important relationship with the length of the limitations period, and that such tolling provisions in a "borrowed" statute of limitations should normally be imported along with the limitations period being borrowed. See, e.g., *Hardin v. Straub*, 490 U.S. 536, 543-44 (1989) (federal court borrowing state statute of limitations in 42 U.S.C. § 1983 action must also apply tolling provisions of the state statute); *West v. Conrail*, 481 U.S. 35, 39 n.6 (1987) (distinguishing the adoption of tolling rules along with a borrowed statute from the adoption of other provisions of the borrowed statute); *Board of Regents v. Tomanio*, 446 U.S. 478, 491-92 (1980) (lower court erred by adopting a "federal tolling rule" that was not contained in the tolling provisions of the state statute of limitaions being borrowed); and *Johnson v. Railway Express Agency*, 421 U.S. 454, 463-65 (1975) (rejecting contention that a federal tolling rule should be superimposed on the tolling provisions of the state statute of limitations being borrowed for actions under 42 U.S.C. § 1981).

This Court's decision in *Johnson v. Railway Express* perhaps best describes why the "borrowing" of statutes of limitations logically includes the rules of tolling contained in those statutes. The Court stated:

> Any period of limitation, . . . is understood fully only in the context of the various circumstances that suspend it from running against a particular cause of action. Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones. In virtually all statutes of limitations the chronological length of the limitations period is interrelated with provisions regarding tolling, revival, and questions of application. In borrowing a state period of limitation for application to a federal cause of action, a federal court is relying on the State's wisdom in setting a limit, and exceptions thereto, on the prosecution of a closely analogous claim.

421 U.S. at 463-64.

This rationale is even more pertinent here, where Congress itself, not a state, has balanced the competing interests and prescribed a particular tolling rule for matters relating to labor relations. As this Court emphasized in *DelCostello v. Teamsters*:

> "In § 10(b) of the NLRA, Congress established a limitations period attuned to what it viewed as the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective-bargaining system."

462 U.S. at 171, quoting Justice Stewart's concurring opinion in *United Parcel Service v. Mitchell*, 451 U.S. 56, 70 (1981). Also part of that balance, obviously, was Congress' view of when the "national interests in stable bargaining relationships and finality of private settlements" should give way to employee and national defense interests for individuals serving in the armed forces. *Id.* Congress resolved that issue by enacting the

military tolling provision in Section 10(b), and the First Circuit adhered to that resolution by applying the Section 10(b) military tolling provision in this case. Accordingly, its decision should not be disturbed.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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Dated: February 26, 1992